

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 15, 2011

In the Matter of K. BRANCH, Minor.

No. 302801
St. Joseph Circuit Court
Family Division
LC No. 2010-000295-NA

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(h). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

To find that MCL 712A.19b(3)(h) has been established, the court must find that *each* of three conditions are met: (1) the parent is imprisoned for such a period that the child will be deprived of a normal home for more than two years, (2) the parent has not provided for the child's proper care and custody, and (3) there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age. *In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010).

The combination of the first two criteria — that a parent's imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody — permits a parent to provide for a child's care and custody *although the parent is in prison*; he need not *personally* care for the child. The third necessary condition is forward-looking; it asks whether a parent "will be able to" provide proper care and custody within a reasonable time. Thus, a

parent's past failure to provide care because of his incarceration also is not decisive. [*Id.* at 161 (emphasis in original).]

In this case, respondent's life sentences will deprive the minor child of a normal home for more than two years. The evidence also established that respondent failed to provide proper care and custody for the child. Respondent left her young daughter in the care of the child's father, who was not a suitable caregiver as evidenced by his involvement with methamphetamines and the child's removal from his home. Moreover, the record contains no indication that respondent provided any financial support for her child during her imprisonment. Given the length of respondent's sentences, her failure to provide proper care and custody for the child, and her failure to financially support the child, the evidence also established that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time. Thus, the court did not err in finding that MCL 712A.19b(3)(h) was established.

Respondent argues that the status of her criminal appeal was not properly considered. This contention is without merit. There is no evidence that respondent's criminal convictions will be overturned or that her prison sentences will be reduced. Because respondent failed to cite any authority that required the trial court to maintain a temporary wardship pending the appeal of her criminal convictions, she has abandoned this issue on appeal. *Berger v Berger*, 277 Mich App 700, 715; 747 NW2d 336 (2008). There is no authority requiring a court deciding a parental rights termination case to consider the strength of a respondent's appeal involving his or her criminal convictions.

Finally, respondent argues that the trial court failed to articulate the best-interest test, MCL 712A.19b(5), in the context of alternatives to termination. Respondent argues that it was in the best interests of the child to have contact with her older half sister, who was in the custody of respondent's mother, and with respondent's family. Respondent contends the court should have considered a guardianship rather than termination of her parental rights. However, respondent does not provide any support for this assertion. At the time of the termination hearing, the child was placed with her paternal uncle, who intended to adopt her. The trial court found that it was in the child's best interests to be in a stable setting, noting that her educational lag was affected by her having had to move frequently. It was in the child's best interests to achieve permanency and stability, which respondent could not provide. Thus, the court did not err in its best-interest determination.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens